

REMARKS:

The Office action mailed November 23, 2003 has been received and carefully considered. Reconsideration of the application in view of the following is respectfully requested. This application is being refiled as a continuation.

Certain objections were made to the specification which have been addressed by the present amendment. It is urged that nothing added to the specification is new as the additions are fully supported by the original drawings and other disclosure.

Claims 33 to 26 were rejected as anticipated by Aebi, et al. It is urged that Aebi fails to disclose the claimed invention. Aebi teaches an expandable implant with a spacing device 11 (expansion member) that can be urged along a threaded cylinder 7 by either a bolt 14 (Fig. 4) or a nut 26 (Fig. 3). These elements of Aebi at least partially show the elements a and b of Claim 33. However, Claim 33 has a third element which is an end cap that has upper and lower surfaces that are elongate and generally linear and that are sized and shaped to engage and operably support an anterior region of both of the vertebrae. It is urged that Aebi does not show and in no way teaches or suggests such an end cover. Consequently, it is urged that Claim 33 and Claims 34 to 36 which depend from Claim 33 are not anticipated by Aebi.

Claims 40 to 41 were rejected as anticipated by Lahille. While Lahille teaches an expandable implant with an expansion member, it fails to teach or suggest how to provide such an expansion member that remains in contact with the upper and lower walls at the anterior ends of such walls during expansion. In Lahille (as seen in Fig. 15) the expansion member 37 starts out substantially spaced from the anterior ends of the implant walls. As the expansion member moves to the left, as seen in Fig. 15, relative to the rest of the implant to produce expansion, the expansion member moves even further from the anterior ends of the legs of the implant. This is important to prevent unwanted lever arms from developing along the anterior portions of the legs as the expansion member moves posteriorly. Consequently, it is urged that Claims 40 and 41 are clearly not anticipated by Lahille.

Claims 37 to 39 were rejected as anticipated by Nolan. Claim 37 calls for an expandable implant and an implant end cover. The end cover is anteriorly positioned and has upper and lower surfaces that are elongate and positioned to contact and support the vertebrae after joining the end cover to the implant in operation. The end cover is important because such implants are often circular, so that they may be screwed between the bones, and provide little support to the front of the vertebrae

to prevent subsidence of the implant into the bones.

The "end cover" 82 (actually plug 82), noted in the action with respect to Nolan, does not meet the requirements of the Claims. In particular, the plug 82 screws into the posterior end of the implant rather than being located at the anterior end to support the anterior ends of the bones. The plug 82 does not contact and support the vertebrae, but rather simply plugs a threaded bore in the rear of the implant. And the plug 82 certainly does not have elongate and generally flat upper and lower surfaces capable of contacting and supporting the vertebrae, as the plug 82 is round. Consequently, it is urged that Nolan does not anticipate Claim 37 or Claims 38 and 39 which depend from Claim 37.

Claims 31 and 32 were rejected as being unpatentable over Nolan in view of Lahille. It is noted that Claim 31 includes a cover assembly. As was discussed with respect to Claim 33, the cover is anteriorly located and has linear upper and lower support surfaces. The cover contacts and supports the vertebrae on the support surfaces that are sized and shaped to extend along an anterior end of each vertebrae. As previously discussed, the Nolan reference does not teach such a structure and, while Lahille shows an expandable implant and expansion member, it also fails to teach or suggest the claimed cover assembly. Therefore,


it is urged that Claim 31 along with Claim 32 which depends from Claim 32 distinguishes over the cited art and are allowable.

In summary, it is urged that Claims 31 and 41 are allowable and notice to that effect is earnestly solicited.

The Examiner is invited to contact the undersigned by telephone, if prosecution of this application can be expedited thereby.

Respectfully Submitted,

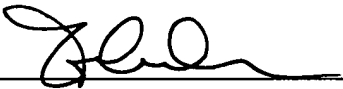
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Roger P. Jackson
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By 

May 25, 2004

(Date of Signature)